REMARKS

These amendments and remarks are being filed in response to the Office Action dated September 15, 2005. For the following reasons this application should be allowed and the case passed to issue.

No new matter is introduced by these amendments. Support for the amendments to Figures 14(a) and 16(a) is found Figure 15(a). The amendment to Figures 14(b) and 16(b) is supported by Figure 15(b).

Claims 14-16 and 18-28 are pending in this application. Claims 14-16 and 18-28 have been rejected. Claims 1-13 and 17 were previously canceled.

Drawings

The drawings are objected to because the third biasing member being an angled plate portion of the hinge plates of claims 23 and 28 is allegedly not shown. This objection is traversed, and reconsideration and withdrawal thereof respectfully requested.

Third biasing members, angled hinge plate portions 491 and 490, are shown in Figures 15(a) and 15(b), respectively. For the Examiner's convenience, Figures 14(a) and 16(a) have been amended to include reference number 491 and Figures 14(b) and 16(b) have been amended to show reference number 490.

Claim Rejections Under 35 U.S.C. § 112

Claims 23-28 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because the "a third biasing member, wherein . . . the locked position" in claim 23 is allegedly not clearly understood. In addition, the Examiner asserted that the terms "second biasing member" and "third biasing member" are not properly defined in claims 23-28 because they

apparently do not relate to providing an elastic force of some type. These rejections are traversed, and reconsideration and withdrawal thereof respectfully requested.

Applicants submit that the claims are clear and definite to one of ordinary skill in this art. Third biasing members, angled hinge plate portions 490 and 491 are clearly described in the specification at page 20, lines 6-12. For the Examiner's convenience, reference number 491 was added to Figures 14(a) and 16(a), and reference number 490 was added to Figures 14(b) and 14(c).

Contrary to the Examiner's assertions, the term biasing member was consistently used in the present claims. As further defined in claims 26 and 28, respectively, the second biasing member is a spring plunger comprising a spring-loaded plunger ball, and the third biasing member is an angled plate portion of the hinge plates. The specification expressly discloses how the spring plunger and the angled hinge plate portions function as biasing members (page 20, lines 6 to 12:

> Following unlocking of the hinge 400 and rotation of hinge plates 420, 440 toward an open position, **a surface of angled latch portion 467 contacts and bears upon angled hinge plate portions 490, 491**. As the rotation of the hinge plates 420, 440 relative to the other hinge plates 430, 450 continues, the ***force*** **imparted by angled hinge plate portions 490, 491 on angled latch portion 467** ***forces*** **hinge 460 toward the locking position with sufficient force to override the** ***resistance*** **of spring plunger 902** and displace hinge 460 relative to shaft 410 along elongated slot 465 toward a distal end of the elongated slot

(emphasis added).

Thus, it is clear that the claimed biasing members provide an elastic force. Applicants submit that claims 23-28 fully comport with the requirements of 35 U.S.C. § 112.

Claim Rejections Under 35 U.S.C. § 102

Claims 23-28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Wenger (U.S. Pat. No. 3,143,185). This rejection is traversed, and reconsideration and withdrawal thereof respectfully requested. The following is a comparison between the instant invention, as claimed, and the cited prior art.

The locking hinge of claim 23 comprises a hinge latch positioned between the first and second opposing hinge plates. The hinge latch comprises an angle latch portion and the hinge latch is movable between a locked position and an unlocked position. Biasing the hinge latch from the locked position to the unlocked position adjusts the locking hinge from the first configuration to the second configuration. The hinge further comprises a plurality of hinge plates. A first biasing member biases the hinge latch towards the locked position. When the hinge latch is in the unlocked position a second biasing member prevents the first biasing member from biasing the hinge latch towards the locked position. Upon rotational movement of the hinge plates, the angled latch portion contacts the third biasing member allowing the first biasing member to bias the hinge latch towards the locked position.

Wenger, however, does not anticipate the claimed foldable ladder because Wenger does not disclose the locking hinge, as required by claim 23. Wenger does not disclose that the hinge latch comprises an angle latch portion, as required by claim 23. The Examiner asserted that hinge latch 16 comprises angle latch portion 23. However, as clearly seen in Figs. 1 and 2 of Wenger, release bolt 16 does not comprise angular slot 26. Release bolt 16 is a different feature that is not directly connected to and does not interact with angular slot 26. In addition, the

Examiner asserted second biasing member, release button 21, does not prevent the first biasing member, return spring 18, from biasing the hinge latch, release bolt 16, toward the locked position when the hinge latch is in the unlocked position, as required by claim 23. The release button 21 unlocks the hinge when the hinge is in the locked position.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the possession of one having ordinary skill in the art. *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 54 USPQ2d 1299 (Fed. Cir. 2000); *Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994). There are significant differences between the claimed foldable ladder and the ladder disclosed by Wenger that would preclude the factual determination that Wenger identically describes the claimed foldable ladder within the meaning of 35 U.S.C. § 102. As explained above, Wenger does not disclose the locking hinge, as required by claim 23. Accordingly, the rejections under 35 U.S.C. § 102 are not legally viable and should be withdrawn.

Applicants further submit that Wenger does not suggest the claimed foldable ladder.

Claim Rejections Under 35 U. S. C. § 103

Claims 14, 15, and 18-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wenger in view of Donahey (U.S. Pat. No. 5,165,501). This rejection is traversed, and reconsideration and withdrawal thereof respectfully requested. The following is a comparison between the invention as claimed and the cited prior art.

An aspect of the invention, per claim 14, is a foldable ladder configured for installation in an opening to provide access between one floor or space and another floor or space, comprising an upper ladder section having at least one rail and a lower ladder section having at least one rail.

A locking hinge connects the rail of the upper ladder section to the rail of the lower ladder section and is configured to allow the lower ladder section to fold relative to the upper ladder section. A second hinge is connected to the upper ladder section and is configured to fixedly attach to a member associated with the opening. When the upper ladder section and the lower ladder section are fully unfolded the locking hinge is adjustable between at least two configurations. In a first configuration, the locking hinge completely prevents the lower ladder section from folding relative to the upper ladder section. In a second configuration, the locking hinge allows the lower ladder section to fold relative to the upper ladder section.

The Examiner acknowledged that Wenger does not disclose a second hinge connected to the upper ladder section to fixedly attach to a member associated with the opening. The Examiner asserted that Donahey teaches this concept as additional means for supporting the ladder. The Examiner averred that it would have been obvious to include Donahey's means for supporting the ladder in the design of Wenger for the purpose of providing additional means for supporting the ladder.

Wenger and Donahey, whether taken alone, or in combination, do not suggest the claimed foldable ladder. Neither Wenger nor Donahey suggest the second hinge configured to fixedly attach to a member associated with the opening, as required by claim 14. The support plate assembly 120 of Donahey is not configured to fixedly attach to a member associated with the opening as required by claim 14. The support plate assembly 120 of Donahey merely rests on a roof or against a wall. Donahey does not suggest modifying the support plate assembly or any part of the second hinge so that it is **configured to fixedly attach** to a member associated with the opening.

Claim 16 was were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wenger in view of Donahey and further in view of Gould et al. (U.S. Pat. No. 4,823,912). This rejection is traversed, and reconsideration and withdrawal thereof respectfully requested.

The Examiner acknowledged that Wenger does not disclose the claimed bracket member. The Examiner asserted that it would have been obvious to modify the ladder of Wenger to include the bracket of Gould et al. to provide additional securing means.

Wenger, Donahey, and Gould et al., whether taken alone or in combination, do not suggest the claimed foldable ladder because Gould et al. do not cure the deficiencies of Wenger and Donahey. Gould et al. do not suggest the claimed foldable ladder including a second hinge connected to the upper ladder section, the second hinge configured to **fixedly attach** to a member associated with the opening as required by claim 14. Thus, claim 16 is allowable for at least the same reasons as claim 14.

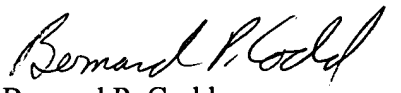
The dependent claims are allowable for at least the same reasons as their respective independent claims and further distinguish the claimed invention. For example, claim 26 requires that the second biasing member is a spring plunger comprising a spring-loaded plunger ball. Claim 28 requires that the third biasing member is an angled plate portion of the hinge plates. The cited references doe not suggest the claimed foldable ladder with these additional limitations.

In view of the above amendments and remarks, Applicants submit that this application should be allowed and the case passed to issue. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



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Amendments to the Drawings:

Figures 14(a), 14(b), 16(a), and 16(b) have been amended to show reference numbers 490 and 491, which designate the angled hinge plate portions.